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Atari Interactive, Inc.

8
9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION
11

12 ATARI INTERACTIVE, INC.,

13 Plaintiff,

14 vs.

15 REDBUBBLE, INC.,

16 Defendant.

17 AND RELATED ACTIONS
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Case No. 4:18-cv-03451-JST

[*Related to Case Nos. 3:18-cv-03843-JST; 3:18-cv-04115; 4:18-cv-04949-JST; and 4:19-cv-00264-JST*]

**DECLARATION OF FRED CHESNAIS IN
SUPPORT OF ATARI INTERACTIVE,
INC.'S MOTION FOR SUMMARY
JUDGMENT**

Judge: Hon. Jon S. Tigar
Date: July 8, 2020
Time: 2:00 pm
Crtrm.: 9

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23 **REDACTED VERSION OF DOCUMENT**
24 **PROPOSED TO BE FILED UNDER SEAL**
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DECLARATION OF FREDERIC CHESNAIS

I, Frederic Chesnais, declare and state as follows:

1. I am the CEO of Atari Interactive, Inc. (“Atari”), plaintiff in this action. I have firsthand, personal knowledge of the facts set forth below and if called as a witness could and would competently testify thereto.

Experience with Atari.

2. My involvement as an executive with Atari began in 2001. Specifically, from July of 2001 to June of 2004, I served as COO and CFO for Infogrames Entertainment SA (now known as Atari SA), the parent company to Atari.

3. In July of 2004, I became the CEO of Atari. I served in that role until July of 2007, when I left Atari to pursue other opportunities.

4. I returned to Atari in February of 2013, acquiring a majority interest in Atari SA out of bankruptcy. Atari SA was then, and continues to be, the parent company of Atari.

5. Beginning in February of 2013, I have served as the CEO for both the parent (Atari SA) and subsidiary (Atari Interactive, Inc.) Atari entities.

Atari’s Intellectual Property and Games.

6. Having been involved with Atari in an executive capacity for more than 13 of the last 20 years, and as CEO since February of 2013, I am well acquainted with the company’s history, brand, and gaming operations.

7. In its early days, Atari produced several well-known and commercially successful games in both arcade format and for its home consoles. Some examples of Atari’s classic games are *Adventure*, *Asteroids*, *Breakout*, *Centipede*, *Missile Command*, *Pong*, and *Yar’s Revenge*.

8. The widespread affinity for these classic games has led to continued demand for products that allow gamers to play these games in their original format. This demand led to Atari releasing its Atari Flashback line of products, and then its Greatest Hits games for the Nintendo DS. Both allowed for the gameplay of *Adventure*, *Asteroids*, *Breakout*, *Centipede*, *Missile Command*, *Pong*, and *Yar’s Revenge*, among many others. The Atari Flashback and Greatest Hits products also included original artwork from these games.

1 9. Similarly, Atari is preparing to release its new Atari VCS console. Atari's VCS
2 console, in addition to many other things, will allow for the gameplay of several of Atari's classic
3 games. The Atari VCS console is much anticipated and Atari raised in excess of \$3 million in
4 crowdfunding to develop the console.

5 10. The Atari brand and Atari's intellectual property portfolio, including intellectual
6 property from Atari's well-known games, are vital to the company.

7 11. Atari actively seeks to protect these intellectual properties, which bring great value
8 to Atari to this day. As Atari's CEO, I oversee and have personal knowledge of Atari's protection
9 of its intellectual property.

10 12. In this regard, on September 25, 2012, Atari obtained a federal trademark
11 registration for its Atari logo for use on both printed matter and clothing. A true and correct copy
12 of this trademark registration is attached hereto as **Exhibit A**.

13 13. On April 23, 2013, Atari obtained a federal trademark registration for its Pong
14 mark for use on both printed matter and clothing. A true and correct copy of this trademark
15 registration is attached hereto as **Exhibit B**.

16 14. On June 17, 2011, Atari received its copyright registration for Atari Greatest Hits
17 Volume I (DS). A true and correct copy of this copyright registration is attached here to as
18 **Exhibit C**.

19 15. On June 17, 2011, Atari received its copyright registration for Atari Greatest Hits
20 Volume 2 (DS). A true and correct copy of this copyright registration is attached here to as
21 **Exhibit D**.

22 ***Licensing of Atari's Intellectual Property.***

23 16. I oversee Atari's licensing of its intellectual property. During the time I have been
24 involved with Atari, it has monetized the goodwill associated with its brand and well-known video
25 games by licensing them for use on consumer products, including apparel.

26 17. Atari continues to do so until this day, having several current licensing agreements
27 with third-party apparel companies. These licensing agreements allow the third-party apparel
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1 companies to use Atari's intellectual properties on their products in exchange for a licensing fee.
 2 True and correct copies of such licensing agreements are attached hereto as **Exhibit E**.

3 18. Atari also entered into a licensing agreement with GSD Group to open several
 4 Atari-themed hotels. The first of these hotels is set to break ground later this year. A true and
 5 correct copy of the press release announcing this venture is attached hereto as **Exhibit F**.

6 19. The value and well-known nature of Atari's intellectual property leads to Atari
 7 receiving numerous requests to use its intellectual property in pop culture. Atari evaluates those
 8 requests on an individual basis. Atari has approved certain uses, for instance, in the 2018 Steven
 9 Spielberg film *Ready Player One*, while denying numerous other requests.

10 20. All in all, Atari's licensing business is a significant source of revenue for the
 11 company, accounting for more than [REDACTED] in revenue and
 12 contribution to profits in calendar 2019 alone.

13 21. Atari has provided its attorneys at Browne George Ross LLP samples of licensed,
 14 authentic Atari apparel. I have reviewed the photos attached to the declaration of Francisco
 15 Cuellar as Exhs. M & N, and I recognize the t-shirts photographed therein to be licensed, authentic
 16 Atari apparel that Atari provided to its counsel.

17 ***Chain of Title.***

18 22. As part of my duties as CEO of Atari, I oversee the recordkeeping of Atari's
 19 corporate documents.

20 23. Atari maintains in its corporate records documents effecting any transfer of assets
 21 or corporate name changes, dating back to Atari's inception and the Atari, Inc. entity, through the
 22 current iteration of Atari.

23 24. I have reviewed these corporate records, and understand that they trace Atari's
 24 ownership of the intellectual property in this case back to Atari's inception and the Atari, Inc.
 25 entity. True and correct copies of these corporate records as maintained by Atari are attached
 26 hereto as **Exhibits G–O**.

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1 Executed this 27th day of April 2020, at New York, New York.

2 I declare under penalty of perjury under the laws of the United States of America that the
3 foregoing is true and correct.

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5 ATARI INTERACTIVE, INC.

6 By:

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Frédéric Chesnais, CEO

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2020, I electronically filed the foregoing **DECLARATION OF FREDERIC CHESNAIS IN SUPPORT OF ATARI INTERACTIVE, INC.'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

SERVICE LIST

Atari Interactive, Inc. v. Redbubble Inc.
U.S.D.C. N.D. CA, Oakland Division Case No. 4:18-CV-03451-JST
[Related to Case Nos. 3:18-cv-03843-JST; 3:18-cv-04115; 4:18-cv-04949-JST;
and 19-cv-00264-JST]

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